

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,) Case No. 4:21-cr-0009-GCH
v.)
ROBERT T. BROCKMAN,)
Defendant.)

**NON-PARTY STUART YUDOFSKY, M.D.'S MOTION TO BE CALLED AS A
WITNESS ON WEDNESDAY, NOVEMBER 17, 2021**

Dr. Yudofsky is a third-party witness under subpoena who, on the advice of counsel, will assert his Fifth Amendment right and decline to answer any question beyond basic identification requirements. Dr. Yudofsky maintains an ongoing medical practice and arranged his clinical schedule to appear as a witness on the date identified by the Government, November 17, 2021. To the extent he is called as a witness in this proceeding, Dr. Yudofsky respectfully requests that his appearance occur on this date.

During the September 13, 2021 status conference, Dr. Yudofsky informed the Court of his concerns regarding the Government's pattern of harassing behavior. In response, the Court assured Dr. Yudofsky that this would not happen during the competency hearing and "if there is problems with inconvenience, then we deal with that by having him go first, or rearranging the court schedule." *See* Excerpt from Transcript of Status Conference held

on September 13, 2021, attached hereto as Exhibit A, at 52:21-24 and 53: 14-16. The Government assured the Court and Dr. Yudofsky that it would attempt to work with Dr. Yudofsky to call him on a certain day to avoid scheduling issues. *See id.* at 53:4-13.

Dr. Yudofsky continues to treat a regular daily calendar of clinical patients in his practice and to consult with medical practitioners. On November 5, 2021, Dr. Yudofsky's counsel wrote the parties to request the date and time the Government intended to call Dr. Yudofsky so that he could coordinate his clinical schedule. *See* Letter to Corey J. Smith, Lee F. Langston, Kathy Keneally, and Jason Varnado dated November 5, 2021, attached hereto as Exhibit B. The letter also reiterated Dr. Yudofsky's intent to invoke his Fifth Amendment right on the advice of counsel, and detailed how Dr. Yudofsky's presence at the competency hearing would affect his medical practice. *Id.*

On November 8, 2021, the Government informed Dr. Yudofsky that it intended to call him on Wednesday, November 17, 2021. *See* Email from Lee F. Langston dated November 8, 2021, attached hereto as Exhibit C. As a result, Dr. Yudofsky took great pains to rearrange his clinical schedule so that he could be available on the date identified by the Government. Counsel for Dr. Yudofsky also rearranged client meetings in order to fly to Texas from Washington, DC with the understanding that Dr. Yudofsky would be called on November 17, 2021.

Despite the Government's assurances, Dr. Yudofsky's counsel was informed on November 16 – the day before Dr. Yudofsky was supposed to be called as a witness – that the Government now anticipated calling Dr. Yudofsky on Thursday, November 18. Dr. Yudofsky, however, has flights booked Thursday afternoon for a prior commitment.

The majority of the witnesses remaining to be called by the Government are paid experts under the control of the Government. Dr. Yudofsky is a non-party witness who already changed his schedule to ensure that he would be available on November 17, 2021. For the foregoing reasons, Dr. Yudofsky respectfully requests that – should the Government still wish to call Dr. Yudofsky as a witness – he be called tomorrow, November 17, 2021.

Dated: November 16, 2021

Respectfully submitted,

/s/ Nicholas E. Petree

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Counsel for non-party Stuart Yudofsky, M.D.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record via electronic filing in compliance with the Federal Rules of Civil Procedure on this 16th day of November 2021.

/s/ Nicholas E. Petree

Nicholas E. Petree